

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 319 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BALVANTBHAI LALBHAI PATEL

Appearance:

1. Criminal Appeal No. 319 of 1993
MR KC SHAH, APP for Appellant No.
MR ANIL S DAVE for Respondent No. 1
NOTICE SERVED for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 05/08/2004

ORAL JUDGEMENT

1. The State of Gujarat, in this appeal, has challenged the judgment and order dated 10.12.1992 passed

in Criminal Case No. 405 of 1992 by the learned Judicial Magistrate, First Class, Pardi imposing sentence on the respondent to pay a fine of Rs. 500/-, in default, to undergo S.I. for 15 days. The respondent was placed for trial for the alleged offence punishable under section 21(1)(iv)(c) punishable under section 92 of the Factories Act, 1948. The respondent pleaded guilty to the charge.

2. The learned APP Mr. K.C.Shah submitted that the learned Magistrate has committed an error in taking lenient view while imposing sentence. According to the learned APP, the learned Magistrate ought to have taken into consideration section 92 of the Factories Act (hereinafter referred to as 'the Act') which clearly lays down that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty-five thousand rupees] in the case of an accident causing death and [five thousand rupees] in the case of an accident causing serious bodily injury.

3. Chapter IV of the Act provides for safety. Section 21 thereof deals with fencing of machinery in every factory, namely every moving part of a prime mover and every fly-wheel connected to a prime mover, whether the prime mover or fly-wheel is in the engine-house or not unless they are in such a position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, namely every dangerous part of any other machinery shall be securely fenced by safeguards of substantial construction while the parts of machinery they are fencing or in motion or in use.

4. Section 92 Chapter X of the Act deals with penalty and procedure. Section 92 provides general penalty for offences which reads as under:

"92. Save as is otherwise expressly provided in this Act and subject to the provisions of Sec.93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction,

with a further fine which may extend to [one thousand rupees] for each day on which the contravention is so continued."

As the respondent has pleaded guilty of the alleged offence of committing breach of section 21 by not providing fencing of the machinery, he is required to be dealt with under section 92 of the Act. Mere reading of section 92 of the Act makes it clear that the occupier and the manager of the factory shall be guilty of the offence and punishable with imprisonment for a term which may extend to [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to [one thousand rupees] for each day. However, for the contravention of any of the provisions of Chapter IV or any rule made thereunder or under section or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty-five thousand rupees in the case of an accident causing death and five thousand rupees in the case of an accident causing serious bodily injury.

5. 'Serious bodily injury' means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint[not being fracture of more than one bone or joint] of any phalanges of the hand or foot.

6. After having gone through the complaint filed against the respondent, it appears that when the inspection of factory was carried out on 15.11.1991 and 20.11.1991, it was noticed that the work Jayantibhai G.Patel had sustained injuries. Even though in the complaint, the injury was stated to be serious in nature, worker Jayantibhai Patel had sustained only thumb injury as there was no fencing on the machinery. Nothing is produced on record to show that the worker Jayantibhai had sustained serious bodily injuries and as per the allegations in the complaint, he had sustained only thumb injury, a minor in nature. The punishment prescribed under section 92 of the Act of imposing fine of Rs. 5000/- for serious bodily injury, therefore, cannot be imposed. The learned Magistrate, in my opinion, was justified in imposing fine of Rs. 500/- which is less than the minimum prescribed under the Act.

7. There being no substance in the appeal, it is dismissed.

(Kshitij R.Vyas, J.)

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